**FARAD CONTINUATION SHEET NO.**
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**APPELLATE SIDE**
**NAGPUR BENCH, NAGPUR**

Second Appeal No. 229/ 2005
(Bajirao Rama Karamenge & 8 others Vs State of Maharashtra, thr. Collector & 4 others)

Appeal — District :
Application No. — of 200
Writ petition

| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |
|---|---|

Mr.Sirpurkar, Adv. for the appellant.
Mr.Deshpande, Adv. for the R-2 to 4.
Mrs.Wasnik, Assistant Government Pleader for R-1.

**CORAM : Smt. Vasanti A. Naik, J.**
**DATED : 31st August, 2007.**

Heard the learned counsel for the parties.

The appellants are the original plaintiffs. It is the case of the plaintiffs that they were occupying the forest land to the extent of 5 to 7 acres since the time of their forefathers. It was further pleaded that they occupied the land at least for more than 50 years before the institution of the suit. They claimed to be the owners of the suit property on the basis of continuous possession for a period of more than 50 years. It was the case of the plaintiffs that the officers of the Forest Department tried to disturb the open and peaceful possession of the appellants over the suit site on 23.08.1985. Therefore, they filed a suit for declaration and permanent injunction restraining the forest officials

and the department from disturbing the possession of the plaintiff over the suit land.

The defendants denied the claim of the plaintiffs/appellants and further denied that the plaintiffs were occupying the forest land since 50 years or more. It was pleaded by the defendants that the plaintiffs tried to make encroachment on the forest land of Prawara range in or after 1980. Since the plaintiffs continued to encroach the forest land in the year 1985, the forest officials tried to resist the plaintiffs from making the encroachment. Criminal cases were also filed against the plaintiffs under the provisions of the Indian Forest Act, 1927.

On the aforesaid pleadings of the parties, the trial Court framed the necessary issues and after considering the evidence tendered by the parties on record, held that the plaintiffs had failed to prove that they had become the absolute owners of the suit land on the basis of adverse possession. The Courts further held that the defendants had not illegally disturbed the possession of the plaintiffs on 23.08.1985. The Court, therefore, refused to grant declaration in favour of the plaintiffs and also dismissed their suit for permanent injunction.

The judgment passed by the trial Court was challenged by the plaintiffs in appeal. The appellate Court, however, dismissed the appeal and confirmed the findings of the trial Court. The findings recorded by both the Courts are based on a proper appreciation of the material evidence on

record and do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

At this juncture, Mr.Sirpurkar makes a request on behalf of the appellant that the appellants may be given some time to vacate the premises as the rainy season would continue for a month more and it would be impossible for the appellants to search for alternate residence. The learned counsel for the appellants, therefore, submits that at least three months time may be granted to the appellants to vacate the suit land.

Mr. S.R. Deshpande, the learned counsel for the Forest Department and Mrs. Wasnik, the learned Assistant Government Pleader, however, opposed the prayer made on behalf of the appellants.

The prayer made on behalf of the appellants is just and reasonable. It is necessary to grant a period of three months to the appellant to vacate the lands in question as this second appeal is being decided by this judgment in the midst of rainy season. The appellants would, therefore, be permitted to occupy the suit property only till 30.11.2007 on their furnishing individual undertakings in this Court within a period of two weeks from today that they would positively vacate the suit premises on or before 30.11.2007. Three

months time for vacating the suit property is, however, conditional on the appellants furnishing the undertaking to the aforesaid effect. Order accordingly.

**JUDGE**

APTE